



Arnold Schwarzenegger  
Governor

February 16, 2010  
22M: 383:JP: 1003

Ms. Verna Lewis, Executive Director  
Kern/Inyo/Mono Employers' Training Resource  
2001 28<sup>th</sup> Street  
Bakersfield, CA 93301

Dear Ms. Lewis:

AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)  
SUMMER YOUTH PROGRAM  
FINAL MONITORING REPORT  
PROGRAM YEAR 2009

This is to inform you of the results of our review for Program Year (PY) 2009 monitoring review of the Kern/Inyo/Mono Employers' Training Resource's (KIM/ETR) ARRA Summer Youth Program (SYP). This review was conducted from September 14, 2009 through September 17, 2009. Our review consisted of interviews with your staff and a review of the following items: expenditures charged to the ARRA SYP, oversight of your subrecipients, and procurement transactions. In addition, we interviewed service provider staff, SYP participants, and worksite supervisors, and focused on the following areas of your ARRA SYP: eligibility determination, program operations, participant worksites, participant payroll processing, and oversight.

Our review was conducted under the authority of Section 667.410(b)(1), (2) & (3) of Title 20 of the Code of Federal Regulations (20 CFR). The purpose of this review was to determine the level of compliance by KIM/ETR with applicable federal and state laws, regulations, policies, and directives related to the ARRA grant.

We collected the information for this report through interviews with representatives of KIM/ETR, service provider staff, ARRA SYP worksite supervisors, and ARRA SYP participants. In addition, this report includes the results of our review of sampled case files, KIM/ETR's response to Sections I and II of the ARRA SYP On-Site Monitoring Guide, and a review of applicable policies and procedures for PY 2009.

We received your response to our draft report on November 24, 2009, and reviewed your comments and documentation before finalizing this report. Your response adequately addressed finding 1 cited in the draft report. However, this issue will remain open until we receive documentation to substantiate the implementation of

your stated corrective actions during a future onsite review. Until then, this finding is assigned Corrective Action Tracking System (CATS) numbers 10045

Your response did not adequately address a portion of finding 2 cited in the draft report and we consider this finding unresolved. We request that KIM/ETR provide the Compliance Review Office (CRO) with additional documentation to resolve the issue that led to the finding. Therefore, this finding remains open and has been assigned Corrective Action Tracking System (CATS) number 10046.

### **BACKGROUND**

The KIM/ETR allocated \$4,664,000 of its \$5,795,754 ARRA youth allocation to serve 1,710 SYP participants in 2009. As of October 20, 2009, KIM/ETR expended \$2,536,439 to serve 1,708 SYP participants.

### **ARRA SYP REVIEW RESULTS**

While we conclude that, overall, the KIM/ETR is meeting applicable ARRA requirements, we noted instances of noncompliance in the areas of program structure and work permits. The findings that we identified in these areas, our recommendations, and the KIM/ETR proposed resolution of the findings are specified below.

### **FINDING 1**

#### **Requirement:**

WIA Section 129(c)(2)(D) states, in part, that youth programs shall provide elements consisting of, in part, paid and unpaid work experiences to eligible youth seeking assistance.

20 CFR 664.460(a-b) states, in part, that work experiences are planned, structured learning experiences that take place in a workplace for a limited period of time. Work experience workplaces may be in the private, for-profit sector, the non-profit sector, or the public sector.

The Department of Labor, Training and Assistance Guidance Letter (TEGL) No. 1408 states, in part, that work experience is the core component of a summer employment program and that for purposes of the Recovery Act funds, the period of "summer" will be from May 1 through September 30. "Summer employment" may include any set of allowable WIA Youth services that occur during the summer months as long as it includes a work experience component as defined under 20 CFR 664.460.

TEGL 14-08 also states, in part, that if a youth served with Recovery Act funds does not participate in summer employment he/she would be included in the regular WIA reporting mechanisms (WIASRD, annual report, quarterly report) and be subject to youth common measures for those states that have a common measures waiver.

**Observation:**

We observed that one of KIM/ETR's subrecipients, Kern County Housing Authority (KCHA), provided services and stipends for in-school youth using ARRA summer employment youth funds. KCHA's *Summer Kick Start* program, however, did not provide a work experience component.

The *Statement of Work*, listed in Exhibit A of the Subgrant Agreement between KIM/ETR and KCHA, describes the program as designed to provide work-readiness skills attainment for 55 youth, ages 14 to 18. The program consisted of placing these 55 youth into an eight-week class ("simulated occupational setting") which met four hours a day, four days a week. Youth received stipends for their participation and attainment of work readiness skills at the end of the program, which terminated September 30, 2009.

In contrast, KCHA also provided services for out-of school youth using ARRA summer employment youth funds. KCHA's *Kern Youth Construction* program placed 21 youth, ages 18 to 24, in on-site work experiences. Participants placed at these "non-simulated work sites" were paid the current minimum wage.

Although the youth in KCHA's *Summer Kick Start* program were paid a stipend for completing work readiness activities, these activities did not take place in a workplace or employment setting and thus did not constitute a bona fide work experience activity or placement.

While on-site, KIM/ETR responded to CRO in a Memo, "*Definition of work experience to qualify for inclusion in ARRA Summer Youth Program.*" This Memo, dated September 16, 2009, reasoned that, based on 20 CFR 664.460 and guidance from DOL, youth programs that provide work-readiness or job/career training through project-based learning and/or simulated work environments meet the requirement of providing a work experience component. They referenced the elements at 20 CFR 664.460(c) which include instruction in employability

skills, exposure to various aspects of an industry, and paid and unpaid community service.

While we agreed that the activities listed above do constitute allowable work experience activities, if these activities do not take place in a workplace, they do not meet the definition of work experience listed in 20 CFR 664.460(a). Further, community service falls under the program element of "leadership development opportunities."

In the Memo, KIM/ETR also referenced a DOL March 24, 2009 Webinar, "Let's Get the Show on the Road: Guidance for Youth Activities." They stated that DOL emphasized that work experience should be "meaningful" and that areas should "consider a combination of public-sector, private-sector, and non-profit summer employment opportunities including project-based community service learning opportunities not conducted at an employer worksite."

We found this same reference in the TEGL 14-08 which, when broadened to include the entire concept, resulted in a significantly different meaning. TEGL 1408, Section 16(E) Program Design Considerations, Worksites states, in part, that states and local areas should seek *employers* that are committed to helping participants receive the experience and training that is required to meet the work readiness goals set for summer employment participants. ETA recommends selecting *employers* that are willing to work closely with program staff. *Employers* should be flexible in working with youth who have issues that may have barriers to *employment*. States and local areas should consider a *combination* of public sector, private sector, and non-profit summer *employment* opportunities. This may also include project-based community service learning opportunities not conducted at an *employer* worksite. When utilizing service learning opportunities, *worksites* supervision, including participant to staff ratio, is critical. Attention should be given to ensure that work experience arrangements do not unfavorably impact *current employees* and do not impair existing *contracts* for services or *collective bargaining agreements*. In addition, the work experience of the participants should not replace the *work of employees* who have experienced layoffs. Youth summer employment should be a *work experience* intended to increase work readiness skills of participants and not impact the profit margin of a for-profit company. ETA recommends adopting selection criteria to

ensure that one *employer* is not favored at the expense of another *employer* (italics added).

Thus, TEGL 14-08, in part, describes approaches to establishing meaningful work experience placements *with employers*. Project-based community service learning opportunities are activities that may be conducted off-site, as part of a work experience placement.

**Recommendation:** We recommended KIM/ETR provide CRO with documentation to demonstrate that all costs associated with KCHA's *Summer Kick Start* program are backed out of the ARRA account and charged to either the WIA youth program or to a non-federal funding source.

In addition, we recommended KIM/ETR provide documentation to substantiate that all of the youth enrolled in KCHA's *Summer Kick Start* program be removed from the reporting measures for the ARRA Summer Youth, grant code 107.

**KIM/ETR Response:** The KIM/ETR stated that they consulted with the Department of Labor (DOL) and acknowledged that although KCHA's *Summer Kick Start* program did provide paid work-readiness training, the program's design did not meet all of the requirements necessary to be considered "summer employment" for the purpose of inclusion into the "ARRA Summer Youth Program" and exclusion from the Common Measures of performance.

In addition, KIM/ETR stated that they would take immediate action to remove KCHA's 53 *Summer Kick Start* program participants from the ARRA Summer Youth Reporting measures by changing their grant codes from 107 to 103.

In addition, KIM/ETR stated that they would also subtract the actual dollars expended on behalf of this program from their reported "Summer Only" expenditures and report this amount as an ARRA year-round expenditure.

**State Conclusion:** The KIM/ETR's stated corrective actions should be sufficient to resolve this issue. However, we cannot close this issue until we receive documentation to substantiate KIM/ETR's successful implementation of its stated corrective actions. Until then, this issue remains open and has been assigned CATS number 10045.

**FINDING 2**

**Requirement:** California Education Code Section 49160 states, in part, that no person, firm or corporation shall employ, suffer, or permit any minor under the age of 18 years to work in or in connection with any establishment or occupation, except as provided in Section 49151, without a permit to employ, issued by the proper educational officers in accordance with law.

California Labor Code Section 1299 states, in part, that every person, or agent or officer thereof, employing minors, either directly or indirectly through third persons, shall keep on file all permits and certificates, either to work or to employ.

**Observation:** Of the 25 case files reviewed for KIM/ETR, we observed six instances in which the participant files were missing work permits.

Subsequent to our on-site review, KIM/ETR provided documentation (copies of signed and correctly dated work permits) to substantiate that two of the six youth participants were lawfully employed.

**Recommendation:** We recommended the KIM/ETR provide CRO with acceptable documentation to substantiate that the remaining four participants referenced above were lawfully employed.

**KIM/ETR Response:** The KIM/ETR provided copies of high school diplomas for two of the four participants listed above, both of whom are 17 years old.

The KIM/ETR stated that their investigation of their subrecipient Ebony Counseling Center (ECC) revealed that work permits were not obtained on behalf of the two remaining participants who were not high school graduates. The KIM/ETR stated that ECC staff attempted to obtain a work permit for at least one of these individuals but were told that work permits are not issued to youth who have dropped-out of (and not re-enrolled in) school. Further, the KIM/ETR stated that ECC staff did not understand that this meant they could not employ the youth but rather, believed that they could do so without work permits. The KIM/ETR also stated that the need for work permits and compliance with all applicable labor and child labor laws was discussed at their mandatory ARRA Youth Provider Training given on April 21, 2009. In addition, KIM/ETR stated that these requirements were also mentioned in their written procurement

materials and in the contracts with service providers. The KIM/ETR enclosed copies of Monitoring Reference materials.

Lastly, KIM/ETR also stated that they would revise their training materials to explicitly state that dropouts under age 18 who are not re-enrolled school cannot be granted work permits and, therefore, cannot legally work under California law.

**State Conclusion:** The KIM/ETR's stated corrective action should be sufficient to resolve the portion of this issue as it relates to the two participants who graduated from high school. However, based on KIM/ETR's stated response for the remaining two participants, we cannot resolve the issue at this time.

California Education Code Section 48402 states, in part, that individuals who are 16 and 17 years old who have not graduated from high school, or who have not received a certificate of proficiency, may opt to attend part-time classes. Further, those who are regularly employed must attend continuation classes for at least four hours per week. In addition, no minor may legally drop out of school entirely.

The two individuals referenced above who were enrolled in the ECC program and employed without the required work permits were unlawfully employed. We recommend that KIM/ETR provide CRO with documentation to substantiate that all wages paid to these participants are backed out of the ARRA account.

In addition, since these two individuals did not participate in the ARRA Summer Youth Program, we recommend KIM/ETR provide CRO with documentation to demonstrate that all other costs associated with serving these two participants are backed out of the ARRA Summer Youth account and charged to the ARRA year-round program.

In addition, we recommend KIM/ETR provide documentation to substantiate that these two individuals be removed from the reporting measures for the ARRA Summer Youth, grant code 107.

Due to the short period of time the 2009 SYP is in operation the above corrective actions were requested in the exit conference in order that corrective action can be taken immediately. Thank you for the timely action taken on specific issues identified above. We are providing you up to 10 working days after receipt of this report to submit to the Compliance Review Office your response to this report. Because we faxed a copy of this report to your office on the date indicated above, we request your

response no later than March 2, 2010. If we do not receive a response by this date, we will release this report as the final report. Please submit your response to the following address:

Compliance Monitoring Section  
Compliance Review Office  
722 Capitol Mall, MIC 22M  
P.O. Box 826880  
Sacramento, CA 94280-0001

In addition to mailing your response, you may also FAX it to the Compliance Monitoring Section at (916) 654-6096.

Because the methodology for our monitoring review included sample testing, this report is not a comprehensive assessment of all the areas included in our review. It is KIM/ETR's responsibility to ensure that its systems, programs, and related activities comply with the ARRA grant program, Federal and State regulations, and applicable State directives. Therefore, any deficiencies identified in subsequent reviews, such as an audit, would remain KIM/ETR's responsibility.

Please extend our appreciation to your staff for their cooperation and assistance during our review. If you have any questions regarding this report or the review that was conducted, please contact Mrs. Jennifer Shane at (916) 654-1292.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessie Mar", with a stylized, cursive script.

JESSIE MAR, Chief  
Compliance Monitoring Section  
Compliance Review Office

cc: Greg Gibson, MIC 50  
Jose Luis Marquez, MIC 50  
Daniel Patterson, MIC 45  
Lydia Rios, MIC 50